USTELECOM
THE BROADBAND ASSOCIATION

April 9, 2014

<u>Ex Parte</u>

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Technology Transition Task Force*, GN Docket No. 13-5; *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353; *Petition for Declaratory Ruling That tw telecom has the Right to Direct IP-to-IP Interconnection*, WC Docket No. 11-119; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135*; USTelecom Petition for Non-Dominant Treatment of Switched Voice Services*, WC Docket No. 13-3; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; WC Docket No. 10-90; *Application of Verizon to Discontinue Domestic Telecommunications Services*, WC Docket No. 13-150; *Transfer of the Licenses of Time Warner Cable to Comcast*, MB Docket No. 14-57

Dear Ms. Dortch:

This brief letter is being submitted in response to a recent notice of an *ex parte* meeting filed on behalf of Cablevision Systems Corporation and Charter Communications, Inc.[1] In that *ex parte* letter, the cable companies again inaccurately assert without elaboration or substantiation that "ILECs remain the dominant providers of fixed voice services in all or virtually all markets in the country…"[2]

USTelecom has explained at length in multiple filings with the Commission the myriad reasons why such a statement could not be further from the truth.[3] USTelecom submits this *ex parte* letter to rebut two discreet foundational assertions from the *Cablevision Ex Parte Letter,* as well as to note that the proposed merger of Comcast and Time Warner Cable would further

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1 *See, Ex parte* Letter from Samuel L. Feder, Jenner & Block, GN Docket No. 13-5, *et al.* (Mar. 27, 2014) (*Cablevision Ex Parte Letter*).

2 *Id.* at 1. *See also, Ex parte* Letter from USTelecom, GN Docket No. 13-5, *et al*. (Jul. 1, 2013).

3 *See, e.g., Petition of USTelecom for Declaratory Ruling that Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services*, WC Docket No. 13-3 (filed Dec. 19, 2012).

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upend any notion of ILEC dominance by creating one of the largest voice providers in the country.

First, USTelecom reiterates that the concept of a separate market for "fixed voice services" that excludes wireless voice services is simply not economically defensible.[4] As the most recent figures on "cord cutting" from the Center for Disease Control reinforce, a constantly growing number of households – *now more than 40%* – have chosen not to subscribe to a wireline voice service and instead rely solely on wireless for their home voice service.[5] Whether or not one calls that a "fixed" service is frankly beside the point because consumers themselves have decided that wireless voice adequately replaces their previous demand for a wired voice service – or, in the case of the majority of younger Americans, have never bothered to purchase a wireline phone because they consider wireless a preferable alternative for voice service. In fact, *well over half of adults ages 18-35 live in households with only wireless service*,[6] suggesting that the trend towards increased wireless substitution will continue for some time.

It is beyond the pale at this point to claim – as Cablevision does implicitly in its *ex parte* letter – that wireless voice services should be ignored when evaluating the market for the provision of voice services. As the Commission itself has recently acknowledged, wireless service revenues have increased while traditional switched access voice service revenues have decreased, "*in part due to substitution of wireless services for wireline services*."[7] In that same *Order*, the Commission emphasized that "wireline, wireless, and cable companies compete with each other for customers."[8] More recently, Chairman Wheeler summarized this point by acknowledging that "wireless phones have become one of, if not the, primary means by which many Americans communicate."[9] And the Commission's own Technological Advisory Council put it even more succinctly: "*Wireless now Dominant Voice Service*."[10]

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4 The Cablevision ex parte also ignores Over-the-Top voice services which unquestionably compete with traditional voice services.

5 Center for Disease Control Report, *Wireless Substitution: Early Release from the National Health Interview Survey*, *January-June 2013* (Dec, 2013) (*CDC Wireless Substitution Report*). CDC's most recent released report found that during the first half of 2013, 39.4% of American households were "wireless only." Extending the consistent growth rate shown over time by the CDC reports would result in an estimated 42% of "wireless-only" households by the end of 2013.

6 *CDC Wireless Substitution Report* at 2. The CDC reported the following wireless-only rates by age groups: 54.3% for 18-24 year olds; 65.6% for 25-29 year olds; and 59.9% for 30-34 year olds.

7 *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, MD Docket No. 13-140, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 13-74, ¶11 (May 23, 2013) (*Regulatory Fees NPRM*) (emphasis added).

8 *Regulatory Fees NPRM* at ¶18.

9 Tom Wheeler, Chairman, FCC, "Access and Public Safety: Enduring Elements of the Public Interest," Official FCC Blog, available at http://www.fcc.gov/blog/access-and-public-safety-enduring-elements-public-interest (Jan. 30, 2014).

10 FCC Technological Advisory Council Presentation (Dec. 9, 2013) (emphasis added), *available at* http://transition.fcc.gov/bureaus/oet/tac/tacdocs/meeting12913/TAC-Presentation-12-9-13.pdf.

Yet by limiting the market definition only to those Americans who continue to subscribe to a wireline voice service, Cablevision treats those consumers who have chosen to rely upon wireless rather than wireline for their residential voice service as if they no longer exist once they "cut-the-cord" – they are simply eliminated from the market as if they had never purchased or considered purchasing a wireline service! The irrationality of such an approach is underscored by the fact that if 99% of households switched to wireless-only, ILECs would still be treated as dominant if they retained the majority of the remaining 1%. Such a conclusion is, needless to say, economically indefensible, as well as fundamentally inconsistent with the Commission's repeated acknowledgements that "wireless, wireline, and cable companies compete with each other for customers."[11]

Second, even setting wireless aside – not to mention Over-the-Top VoIP, texting, and a multitude of other widely adopted voice alternatives – Cablevision's assertion concerning ILEC "dominance" in the market for voice services is belied by its own statements to Wall Street and the Commission's own data.

In Cablevision's most recent quarterly financial report, Cablevision states that it *provides voice service to 45% of customers passed by its network*.[12] In contrast, an analysis of FCC and CDC data shows that ILECs provide switched voice service to only *about one-quarter* of the homes passed by their traditional wireline networks nationwide.[13] And since 2000, nationwide ILEC switched access lines have fallen by more than two-thirds – with switched access lines falling more than 11% during 2012 alone.[14]

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[11] *Id. See also, Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, FCC 11-161, para. 9 (rel. Nov. 18, 2011) ("And the system is eroding rapidly as consumers increasingly shift from traditional telephone service to substitutes including Voice over Internet Protocol (VoIP), wireless, texting and email…").

[12] Cablevision Press Release, *Cablevision Systems Corporation Reports Fourth Quarter and Full Year 2013 Results*, at p. 18 (Feb. 26, 2014) ("Cablevision Fourth Quarter 2013 Results"), available at http://www.businesswire.com/news/home/20140226005819/en/Cablevision-Systems-Corporation-Reports-Fourth-Quarter-Full. Typically, cable company networks are capable of serving all, or nearly all, households within their franchise footprints. Further, as the Commission has stated, more than 85% of American households have a cable broadband connection available to them. *Eighth Broadband Progress Report, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans*, 27 FCC Rcd. 10342, FCC 12-90, para. 60 (Aug. 21, 2012).

[13] *See* Patrick Brogan, USTelecom Research Brief, "Growing Voice Competition Spotlights Urgency of IP Transition," ("USTelecom Research Brief") (November 22, 2013) available at http://www.ustelecom.org/sites/default/files/documents/111813-voice-comp-research-brief.pdf, (projecting that approximately 26 percent of telephone households would have ILEC switched voice service by the end of 2013, based on trends in FCC and CDC data). AT&T has recently noted that in the 22 states in which it operates as an ILEC, fewer than 30 percent of residential consumers subscribe to ILEC legacy switched voice services – and in some of those states that figure is below 20%. AT&T Proposal for Wire Center Trials, GN Docket No. 13-5 at 3 (Feb. 27, 2014).

[14] *See, Local Competition Report: Status as of December 31, 2012,* Federal Communications Commission, Table 10 (Nov. 2013) ("*Local Competition Report*").

In fact, the Commission's most recent *Local Competition Report* indicates that in each of the states in which Cablevision operates – New York, New Jersey and Connecticut (which is also the home of Charter) – *competitive local exchange providers (CLECs) including cable companies, have the majority of residential wireline voice subscribers.*[15] Even among business end-users, CLECs have the majority of lines in both New York and New Jersey.[16] Given that cable companies often choose not to serve more rural areas of the country, along with Cablevision's stated penetration numbers in those areas it does, *it is reasonable to assume that in much or even most of the area within its footprint, Cablevision has as many or more voice customers than the ILEC within that same geographic area*.[17]

It is impossible to square these facts with Cablevision's bare assertion that "ILECs remain the dominant providers of fixed voice services in all or virtually all markets in the country…" Indeed, as Chairman Wheeler has recently emphasized, "the elimination of circuit-switched monopoly markets certainly obviates the need for old monopoly-based regulation of that technology…"[18]

Moreover, the inconsistency in Cablevision's argument is further highlighted by comparing ILEC voice market shares with the cable industry's market shares in broadband and video. Cablevision's quarterly financial report goes on to explain that the company *provides broadband service to 55 percent of homes passed by its network*[19] and that *56% of the homes passed by its network subscribe to its video service*[20] – a service for which the Commission recently granted the cable industry significant regulatory relief.[21] So, in short, Cablevision asserts that the Commission should regulate incumbent LECs as dominant providers of voice services despite the fact that in the vast majority of geographic areas of the country ILECs have a smaller share of the voice market than cable providers do of either the video or broadband markets – and in many cases even the voice market itself – while nonetheless insisting that they have no market power in either of those latter two markets. Such arguments simply do not withstand logical scrutiny.

Finally, it should be noted that, if completed, the proposed merger of Comcast and Time Warner Cable would turn on its head any notion of ILEC dominance in *any* relevant

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15 *Local Competition Report*, Table 10.

16 *Id.* at Table 11.

17 Even on a national basis, both Cablevision and Charter have as many voice customers as all but the four largest ILECs and more than many smaller ILECs that they would have regulated as dominant, including FairPoint, TDS, Cincinnati Bell, Hawaiian Telecom and Consolidated Communications. Christopher C. King, Stifel Nicolaus, Telecom Services & Cable: 2014 Outlook, p. 71 (Jan. 9, 2014) ("Stifel Report"). They would be in a virtual tie with Windstream for total voice customers.

18 Tom Wheeler, *Net Effects: The Past, Present and Future Impact of our Networks*, at p. 20 ("*Net Effects*").

19 *Cablevision Fourth Quarter 2013 Results* at p. 18.

20 *Id.* It should be noted that this video market share is not limited to "wireline" video services but rather includes households that subscribe to "wireless" DBS video services.

21 *Revision of the Commission's Program Access Rules*, MB Docket No. 12-68, Report and Order and Further Notice of Proposed Rulemaking, FCC Rcd. 12605 (Oct. 5, 2012).

product market. *The combined company would instantly be the third largest – and approaching second largest – wireline voice service provider in the country.*[22] Perhaps more importantly, the combined company would have "incumbent" cable networks capable of delivering voice, data and video in 43 of the top 50 MSAs – many more than any other telecom provider – and would account for *twice as many wired broadband connections capable of delivering voice services as the largest ILEC.*[23] Indeed, the combined company would have more broadband connections than the three largest ILECs *combined*.[24] Of course, the cable industry as a whole already has considerably more end-user connections capable of delivering voice service than do ILECs – with Comcast already having the most such connections even before the proposed merger. Thus, to the extent that Cablevision is asserting that ILEC dominance arises out of ownership of last mile connections, the merger of the first and third largest broadband providers would simply reinforce the current fallacy of this argument.

Please include this filing in the dockets identified above.

Sincerely,

Glenn T. Reynolds

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c: Jonathan Sallet
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22 Stifel Telecom & Cable Services 2014 Outlook ("Stifel"), at p. 71.

23 Stifel, at p. 70.

24 *Id.*